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10/780,019	02/17/2004	Carol J. Miller		9590

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Michael R. McKenna
Suite 3800
500 W. Madison
Chicago, IL 60661

EXAMINER	
CONLEY, FREDRICK C	
ART UNIT	**PAPER NUMBER**
3673	

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/780,019	MILLER, CAROL J.	
	Examiner	Art Unit	
	Fredrick C Conley	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 12-18* is/are rejected.

7)☒ Claim(s) *11* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/17/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Objections

Claim 11 recites the limitation "the fastener". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 10, and 12-17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,687,931 to Benavides.

Claim 1, Benavides discloses a case for enclosing a pillow comprising a first pocket 20 and a second pocket 22, each of said pockets having an opening (24,26) defined by a rim at a proximal end and a closed section extending to an opposite end, and the opposite end of the first pocket extends from a portion of the rim of the second pocket,

whereby, a pillow can be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow.

Claim 2, wherein the pillow is inserted into the second pocket, and the first pocket turns inside out as the second pocket with the pillow disposed therein is inserted into and covered by the first pocket to enclose the pillow (col. 3 lines 25-37).

Claim 3, wherein the pillow is inserted into the first pocket, and the first pocket with the pillow disposed therein is inserted into and covered by the second pocket to enclose the pillow (col. 4 lines 25-28).

Claim 4, Benavides discloses a case for enclosing a pillow comprising a first pocket 20 and a second pocket 22, each of said pockets having an opening (24,26) defined by a rim at a proximal end and a closed section extending to an opposite end, and the opposite end of the first pocket being connected to a portion of the rim of the second pocket,

whereby, a pillow can be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow.

Claim 5, wherein the first pocket is a first pillowcase and the second pocket is a second pillowcase.

Claim 6, wherein the first pillowcase has a size that is not substantially different from that of the second pillowcase.

Claim 10, wherein the pillow is inherently capable of being enclosed independent of a fastener.

Claim 12, wherein either one of the first pocket and the second pocket can be disposed externally over the other of the first pocket and the second pocket so that exposed outer surfaces of the case can be interchanged (col. 2 lines 45-61).

Claim 13, wherein visual characteristics on the exposed outer surface of the first pocket are distinctly different from visual characteristics on the exposed outer surface of the second pocket, so that interchanging the exposed surfaces of the case presents two distinctly different case appearances (col. 2 lines 45-61).

Claim 14, wherein visual characteristics on the exposed outer surface of the first pocket are substantially similar from visual characteristics on the exposed outer surface of the second pocket, so that the exposed surface of one of the first pocket and the second pocket when soiled can be interchanged with a clean exposed outer surface of the other of the first pocket and the second pocket allowing further use of the case while preserving the visual characteristics of the case (col. 2 lines 45-61).

Claim 15, Benavides discloses a method of enclosing a pillow comprising the following steps:

inserting a pillow into an opening of one of a first pocket and a second pocket of a case with each of said pockets having an opening defined by a rim at a proximal end and a closed section extending to an opposite end, where the opposite end of the first pocket extends from a portion of the rim of the second pocket; and

covering said one of the first pocket and the second pocket with the pillow disposed therein with the other of the first pocket and the second pocket to enclose the pillow (col. 3 lines 8-36).

Claim 16, wherein inserting a pillow into an opening of one of a first pocket and a second pocket of a case includes inserting the pillow into the second pocket, and wherein covering said one of the first pocket and the second pocket with the pillow disposed therein with the other of the first pocket and the second pocket includes turning the first pocket inside out as the second pocket with the pillow disposed therein is inserted into and covered by the first pocket to enclose the pillow.

Claim 17, wherein inserting a pillow into an opening of one of a first pocket and a second pocket of a case includes inserting the pillow into the first pocket, and wherein covering said one of the first pocket and the second pocket with the pillow disposed therein with the other of the first pocket and the second pocket includes inserting the first pocket with the pillow disposed therein into the second pocket to enclose the pillow.

Claims 7-8 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,419,779 to Janesh.

Claim 7, Janesh discloses a case for enclosing a pillow insert 26 comprising a sheet of material having a peripheral edge, said sheet measuring approximately three pillow insert lengths in length and two pillow insert widths wide for a first pillow length at a first end and one pillow width wide for each of a middle pillow length and a second end pillow length of said sheet,

the first end 30 of the sheet being folded lengthwise forming a first double layer having a first bottom layer and a first top layer with a portion of the peripheral edge of the first top layer being attached to the first bottom layer forming a first pocket with an opening proximate the first end, and

the second end pillow length 29 being folded widthwise and laid over the middle pillow length forming a second double layer comprising a second bottom layer and a second top layer and a portion of the peripheral edge of the second top layer attached to the second bottom layer forming a second pocket with an opening proximate the first pocket,

whereby, a pillow insert can be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow insert disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow (fig. 5).

Claim 8, wherein the portion of the peripheral edge of the first top layer being attached to the first bottom layer is attached by stitching, and the portion of the peripheral edge of the second top layer being attached to the second bottom layer is attached by stitching (col. 2 line 50).

Claim 18, Benavides discloses a method of making a case for encasing a pillow 26 comprising the following steps:

folding lengthwise a first end 30 of a sheet of material having a peripheral edge, said sheet measuring approximately three pillow lengths in length and two pillow widths wide for a first pillow length at a first end and one pillow width wide for each of a middle pillow length and a second end pillow length of said sheet to form a first double layer with a first bottom layer and a first top layer,

attaching a portion of the peripheral edge of the first top layer to the first bottom layer to form a first pocket with an opening proximate the first end;

folding widthwise the second end 29 pillow length laying it over the middle pillow length to form a second double layer comprising a second bottom layer and a second top layer; and

attaching a portion of the peripheral edge of the second bottom layer to the second top layer to form a second pocket with an opening proximate the first pocket,

whereby, the case for encasing a pillow allows a pillow to be inserted into one of the first pocket and the second pocket, and said one of the first pocket and the second pocket with the pillow disposed therein can be inserted into and covered by the other of the first pocket and the second pocket to enclose the pillow (col. 2 lines 50-53).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,687,931 to Benavides in view of U.S. Pat. No. 6,196,156 to Denesuk.

Claim 9, Benavides discloses all of the Applicant's claimed limitations except for having a fabric impervious to dust mites. Denesuk discloses a fabric impervious to dust mites (col. 15 lines 5-10). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a fabric impervious to dust mites as taught by Denesuk in order to inhibit the proliferation of dust mites.

Allowable Subject Matter

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC

MICHAEL F. TRETTEL
PRIMARY EXAMINER
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